

Memorandum
Fair Political Practices Commission

To: Chairman Johnson; Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Scott Hallabrin, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: July 29, 2008

1. *California ProLife Council, Inc. v. Karen Getman, et al.*

This action challenged the Act's reporting requirements for express ballot measure advocacy. In 2000 the Federal District Court for the Eastern District of California dismissed certain counts and granted the FPPC's motion for summary judgment on the remaining claims. The Ninth Circuit Court of Appeal agreed that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy if it can show a sufficient state interest for its rules. The Ninth Circuit remanded the matter to the district court to determine whether California could establish an interest sufficient to support its disclosure rules, and that those rules are properly tailored to that interest. On February 22, 2005, the district court granted defendants' motion for summary judgment on those questions. Plaintiff again appealed. The Ninth Circuit heard oral argument on February 12, 2007. On November 14, 2007, the court released its opinion under the name *California ProLife Council, Inc. v. Randolph*, finding that California had established its compelling interest in disclosure of the sources of funds used to make independent expenditures supporting or opposing ballot measures. The court did find, however, that when the entity making such expenditures was a multi-purpose non-profit group organized as a Section 501(c)(4) corporation, which did not make expenditures or contributions towards the election or defeat of candidates, the Commission failed to demonstrate how the ancillary rules involving registration as a recipient committee were sufficiently tailored to support California's compelling interest in disclosure. The Ninth Circuit remanded the case to the trial court without further instructions. The parties submitted a Joint Status Conference Report, proposed judgments and further briefing at the trial court's order. The trial court then entered an order and final judgment in the case, finding that plaintiff had prevailed on one of its ten claims, and entering judgment enjoining the Commission from imposing on plaintiff and similar groups the ancillary recipient committee rules referenced in the Ninth Circuit's opinion. The Commission had anticipated this judgment, and in December, 2007 adopted Emergency Regulation 18413 to comply with the Ninth Circuit's ruling. Plaintiff has moved to recover more than \$700,000 in attorney's fees and costs under 42 U.S.C. Section 1988. A hearing on plaintiff's motion will be heard on August 8, 2008.

2. Carole Migden et al v. FPPC et al.

On March 3, 2008, Senator Carole Migden and her campaign committees filed suit against the Commission in the Federal District Court for the Eastern District of California, seeking declaratory and injunctive relief on a claim that the Act's "surplus funds statute," Government Code Section 89519, was an unconstitutional limitation on the expenditure of campaign funds. The case is assigned to Magistrate-Judge Edmund F. Brennan. The Commission filed its Opposition to Senator Migden's Motion for Preliminary Injunction on March 18, 2008. On March 20, 2008, the Commission voted to accept a Stipulation from Senator Migden admitting 89 violations of the Act not at issue in her lawsuit, agreeing to pay a fine of \$350,000. On March 25, 2008, the Commission filed its Answer to Senator Migden's Complaint, along with a Counterclaim seeking damages for numerous additional violations of the Act that Senator Migden did not admit in the Stipulation. On April 3, 2008, the court granted Senator Migden's Motion for Preliminary Injunction. The parties submitted written Status Reports to the court, which held a Status Conference on May 14 at 10:00 a.m. The court then scheduled cross motions for summary judgment on plaintiffs' constitutional claims, which will be briefed from May through July, and heard by the court at 9:30 a.m. on August 4, 2008. On May 28, the parties moved the court to permit plaintiffs to file an amended complaint, dropping their broadest challenge to Government Code Section 89519, and thereby focusing the summary adjudication proceedings on plaintiffs' contention that the statute is unconstitutional as applied to Senator Migden's particular circumstances. The parties attended a mandatory, judicially supervised settlement conference on July 3, 2008. As a result, the August 4, 2008, hearing was postponed.